

Over the past 50 years there has been an increased awareness of disability in society, and of the rights of disabled people (including people with mental health problems). However, there still exists widespread discrimination of people with disabilities. The Disability Discrimination Act 1995 was drawn up to help protect the rights of people with disabilities and enforce the concept of equal opportunities.

Discrimination takes place where a person with a disability is treated less favourably than others, for a reason which relates to the disability, and the less favourable treatment cannot be justified. There are additional definitions given which relate to the different parts of the Act.

This fact sheet provides information on the following areas:

1. What is the Disability Discrimination Act?
2. What does the DDA cover?
3. Employment and the DDA
4. Services and the DDA
5. Education and the DDA
6. When is discrimination justified?
7. How do I take action?
8. The Disability Rights Commission

1. What is the Disability Discrimination Act?

The Disability Discrimination Act 1995 (DDA) makes it illegal to discriminate against people with a disability in certain circumstances.

What is a disability?

A person is described as having a disability in the Act when "he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities".

What is mental impairment?

A mental impairment is described as a condition that is well recognised by the medical profession that is more than a mood or mild eccentricity. Schizophrenia is specifically mentioned in the government's guidance to the Act as likely to be a qualifying condition but depends on the degree of mental impairment caused by the illness. It is important to realise that this definition is different from the definition used in the Mental Health Act.

What do they mean by substantial?

The effect of the condition is substantial when it affects the time taken to carry out an activity in the way in which the activity is carried out and the effect goes beyond the normal differences that exist between people.

What is considered as long-term?

The effect is long-term when it has either lasted at least 12 months, is expected to last 12 months or for the rest of a person's life if shorter. There are specific rules covering conditions which affect a person from time to time, where there are periods in-between when the person is not affected.

What are normal day to day activities?

The guidance that the government gives to the Act, states that no particular activity can be considered as normal, as different activities are considered normal for different groups of people. It goes on to say that a condition affects a person's day to day activities if it affects on of the following:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger

2. What does the DDA cover?

The DDA covers discrimination by:

- employers
- service providers
- landlords and people selling property
- transport services
- places of education

From October 2004, disabled people have been given new rights of 'access of goods, services, facilities and premises'. This is because the DDA now also includes that service providers should make reasonable adjustments to physical features that cause or could cause people with disabilities 'unreasonable difficulties' (time, inconvenience, effort, discomfort or loss of dignity in using the service) in using the service. Examples of what would be covered by 'physical features' are;

steps, stairways, kerbs, exterior surfaces and paving, parking areas, building entrances and exits (including emergency escape routes), internal and external doors, gates, toilet and washing facilities, public facilities (such as telephones, counters or service desks), lighting and ventilation, lifts and escalators.

What is not covered by the DDA?

There are some specific conditions that are excluded from the definition of a disability:

- tendency to set fires, steal
- physical or sexual abuse of other people
- exhibitionism or voyeurism
- the effects of tattoos or piercings
- the effects of drug or alcohol abuse

However, a person who has a qualifying condition in addition to one of these excluded conditions will still be covered.

3. Employment and the DDA

Employers must not discriminate in three areas:

- the selection procedure and offering employment
- considering people for promotion, dismissal or redundancy
- obligation to make changes

The selection procedure and offering employment

The selection procedure must not treat people less favourably on the grounds of disability. All stages of the procedure from the advertisement through to the interview and selection must be considered. Employers must ensure discrimination does not occur:

- in the way they decide who gets the job - for example the applications are handled; the way the interview is carried out; or tests given to candidates
- in the terms on which they offer a job - for example, by giving only a short-term contract
- by refusing or omitting to offer a job

The procedure should be based on the specific needs of the post, rather than on an assumption such as what type of person might fit or want the post. In addition employers must consider how the post and conditions could be made accessible by reasonable adjustments to work practice or the workplace. How reasonable an adjustment is depends on:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make the adjustment

Reasonable adjustments for people with mental health problems could include:

- altering your working hours, for instance if you find it hard to get up in the morning because of the medication you take
- allowing absences during working hours for rehabilitation, assessment of treatment, this could include seeing a therapist
- providing additional supervision

The Act does allow positive discrimination in favour of people with disabilities.

Considering people for promotion, dismissal or redundancy

The terms of service offered to potential or existing employees with disabilities must not be less favourable, for a reason that relates to the disability, than those offered to other employees to whom this reason does not apply. Discrimination should be prevented:

- in their terms and conditions of employment
- in chances for promotion, transfer, training or other benefits and/or by refusing to give them these chances
- by not dismissing them unfairly
- by not treating them less fairly than other workers

However, where there is a reason directly related to the job why the terms of service should be different, and there is no adjustment that could be made, it may be legal to offer less favourable terms of service.

Obligation to make changes

The Act requires employers to make reasonable adjustments when a physical feature of the premises occupied by the employer or any arrangements made by or on behalf of the employer put a person with a disability at a disadvantage. How reasonable an adjustment is depends on:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make the adjustment

The lower the cost and inconvenience of the adjustment in relation to the employers resources and the more practicable the adaptation, the more likely it is to be reasonable.

The DDA has also made it the law that employers' website and intranet/extranet services should be accessible to all.

Occupations exempted from the Act

Serving members of the armed forces are exempted from the Act.

However as a result of changes to the DDA that came in during 2004, employers with fewer than 15 employees will now also have to comply with the DDA, as well as many of the previously excluded public service professionals such as fire, police and prison services.

4. Services and the DDA

Service providers must not discriminate in four areas:

- refusing to provide a service
- providing a lesser quality service
- providing a service on less favourable terms
- the obligation to make changes

Refusing to provide a service

The Act makes it illegal to refuse to provide a service for a reason related to a person's disability. Guidance provided by the government also makes it illegal for a service provider to refuse to serve a person with a disability on the ground that another service provider is able to offer a better service.

Providing a lesser quality of service

The services provided to people with a disability should not be of a lesser quality to those provided to others, for a reason related to the disability. However, it does not mean that the service has to be the same or that special services have to be provided, other sections of the Act introduce this obligation.

Providing a service on less favourable terms

The terms on which the service is offered should not be different to those offered to others for a reason related to the person's disability. However, when a service provider offers a service to the customer's specifications, the service provider is entitled to charge for the particular services provided, which may result in a greater charge.

The obligation to make changes

The Act introduces the obligations of the service provider to offer auxiliary aids to allow a person with a disability to use a service, to make changes to the way a service is provided to allow a person with a disability to use the service, and to make changes to the premises to allow a person with a disability to use the service.

Exemptions from the Act

The obligation to make alterations to enable a disabled person to use a service came into force from October 2004. There is an understanding that the duty to provide auxiliary aids or to alter the way that the service is provided will not alter the nature of the business. In addition there are situations where less favourable treatment can be justified.

5. Education and the DDA

In education, the DDA protects against three sorts of discrimination likely to affect people with mental illness:

- less favourable treatment
- reasonable adjustment
- auxiliary aids and services

Less favourable treatment

Education providers (and providers of other services aimed primarily at students) will be acting unlawfully if they treat disabled students or applicants less favourably on grounds relating to their disability. However, less favourable treatment may be justified in certain circumstances, for example, where the less favourable treatment is necessary to maintain academic standards.

Reasonable adjustment

Education providers (and providers of other services aimed primarily at students) are required to make reasonable adjustments to ensure that disabled people are not put at a substantial disadvantage. How reasonable an adjustment is depends on:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make the adjustment

The duty to make reasonable adjustments includes a duty to make anticipatory adjustments. Reasonable adjustments for people with mental health problems could include:

- allowing more time for exams so someone could get up and walk around, making the environment less stressful
- having exams in a quiet, comfortable room to reduce stress
- provision of mentors for people with mental health problems

Auxiliary aids and services

Auxiliary aids and services to enable disabled people to participate and not be at a substantial disadvantage must be provided, where reasonable (see above), in post-education but not in schools. An example may be access to a mentoring service for people with mental health problems.

6. When is discrimination justified?

There are circumstances in which the Act permits justifiable discrimination. The circumstances are described in each section of the Act. To justify discrimination in employment the employer must be able to give a reason that relates to the person's disability and provide evidence for the particular case. It will not be enough to prove that the discrimination was for a reason not related to the person's disability or provide general evidence supporting the discrimination.

In the section relating to the provision of goods and services there are four reasons given for the justification of discrimination:

- endangering health and safety - when providing the service to the person with the disability would endanger anyone's health and safety
- lacking capacity to contract - when the person with the disability does not have the capacity to understand the consequences of entering into a contract
- making the service available to others - when providing the service to the person with the disability would prevent others from receiving the service
- passing on an extra cost - the service provider can pass additional costs on to

the person with a disability when the modifications are in response to the person's requests

The DDA and insurance

The DDA makes a specific exemption for providers of insurance. That is the person or company offering the insurance, not the broker of any other intermediate person. Insurance providers are allowed to provide insurance to a person with a disability on less favourable terms, provided the difference is based on relevant evidence from a reasonable source and that the difference is reasonable. In practice, companies may charge you more for insurance if there is evidence that the illness you have puts you at a higher risk of making a claim. The evidence they use is not necessarily specific to you but from research undertaken by other parties.

Example:

You may have to pay more for life insurance if you have severe mental illness because evidence shows that people with severe mental illness have a shorter life expectancy.

Most insurance companies do not cover existing conditions on general policies. This is because it can be difficult to decide whether something has happened as a result of a person's existing condition, or, if a person has recovered and when they are no longer considered to be affected by the condition.

Many people have difficulty in buying common forms of insurance such as travel or motor insurance. Often if you declare that you have a severe mental health problem you will have to provide additional information and pay a higher premium. However, policies vary between companies and you should shop around to get the best terms.

7. How do I take action?

Your rights to services, facilities and education under the Act are enforced through the courts. Employment rights are enforced through employment tribunals. There are complex time limits, after which a person may not be able to make a claim.

The Act protects people against victimisation who:

- allege that the Act has been disregarded
- bring proceedings under the Act
- give evidence or information to proceedings brought under the Act
- do anything under the Act, or
- is believed to have or suspected of having done or intending to do any of these things

Taking action

Because of the complexity of the DDA, it would be wise to contact the Disability Rights Commission or check out their website (see further information). They provide information and advice on the DDA and your rights. If you feel that you have been discriminated against under the DDA and wish to take legal action, the Disability Law Service may be able to help you pursue your case.

8. The Disability Rights Commission

The National Disability Council is responsible for reporting to the government on how the DDA is functioning and preparing codes of practice for the Act. It has no power to investigate or act on behalf of individuals, unlike the Commission for Racial Equality or the Equal Opportunities Commission. In order to remedy this, the Disability Rights Commission (DRC) was set up.

The main duties of the DRC are to:

- work towards the elimination of discrimination against disabled people
- promote equal opportunities for disabled people
- take appropriate steps with a view to encouraging good practice in the treatment of disabled people
- advise the Government on the operation of the DDA

The DRC has specific functions to:

- to assist disabled people
- provide a central source of information and advice, particularly to disabled people, businesses, employers, service providers and anyone else it affects
- prepare and review statutory codes of practice
- make arrangements for conciliation in the field of access to goods, facilities, services and premises
- undertake formal investigations
- carry out research

The DRC does not take on individual case work, but may be able to advise you of a solicitor that could help you with your case, or to advise you on your next steps.

The Disability Rights Commission Helpline is the first contact for all enquiries. The Helpline provides information and advice about all aspects of the DDA, as well as signposting specialist organisations where necessary. In addition, it can offer good practice advice on the employment of disabled people. In general, the DRC makes no charge for its services - this would include all of the public services offered by the Commission including any advice or support under the DDA or information or guidance towards best practice.

DRC Helpline, FREEPOST MID02164, Stratford upon Avon, CV37 9BR

Tel: 08457 622 633 Helpline hours 8am - 8pm, Monday to Friday Web: www.drc-gb.org

Further information

The Disability Law Service is a national charity that provides confidential and free legal advice for disabled adults, their families and carers; and can provide a casework service.

Disability Law Service, 39-45 Cavell Street, London, E1 2BP

Tel: 020 7791 9800 Minicom: 020 7791 9801 Hours: Mon-Fri 10am – 1pm & 2pm – 5pm

Email: advice@dls.org.uk

Web: www.dls.org.uk

Skill is a national bureau for students with disabilities. It provides information and support for students, colleges and universities and can advise you on your rights under the DDA.

Tel: 0800 328 5050 Minicom: 0800 068 2422 Monday-Thurs 1.30 pm-4.30 pm

Email: info@skill.org.uk

Web: www.skill.org.uk

The Rethink National Advice Service provides information and advice on a number of issues affecting people with severe mental illness. They can be contacted on:

Rethink National Advice Service, 28 Castle Street, Kingston, Surrey, KT1 1SS

Tel: 020 8974 6814 Mon, Wed, Fri 10am-3pm, Tues, Thurs 10am-1pm

Email: advice@rethink.org

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